

January 17, 2006

Clerk, U.S. Bankruptcy Court

Below is an Opinion of the Court.


ELIZABETH PERRIS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
) No. 04-37154-elp11
ROMAN CATHOLIC ARCHBISHOP OF)
PORTLAND IN OREGON, AND SUCCESSORS,) MEMORANDUM OPINION
A CORPORATION SOLE, dba the) (Motions for Relief from Stay,
ARCHDIOCESE OF PORTLAND IN OREGON,) Remand, and Abstention)
)
Debtor.)

The issue before the court is whether to allow more than 100 tort claimants in this Chapter 11 case to proceed in state court to liquidate their claims for distribution purposes. The claimants have filed motions for relief from stay in the main bankruptcy case and motions to remand and/or abstain in the tort claim adversary proceedings. For the reasons set forth below, the motions for relief from stay and to remand/abstain of the claimants who seek only compensatory damages¹ (or who agree to

¹ Relief from stay, if granted, will be limited to prosecuting claims for compensatory damages. Any claimant who wants to amend his or her state court action to add a claim for punitive damages will be included in the group of claims retained for trial in the United States District Court.

1 limit their damages claim to compensatory damages) will be granted.
2 Subject to relief from stay to allow debtor to be added to lawsuits
3 commenced postpetition so that debtor can remove the lawsuits to federal
4 court, the motions of the claimants who seek punitive as well as
5 compensatory damages will be denied. This will allow all punitive damage
6 claims to be handled in a single forum, the United States District Court
7 for the District of Oregon, and will provide consistency in the handling
8 of the issues of debtor's net worth and financial condition, which are
9 pertinent to the amount of punitive damages, if any.

10 BACKGROUND

11 Debtor filed this Chapter 11 case on July 6, 2004 because, according
12 to Archbishop Vlazny, "[f]iling for bankruptcy offers the best
13 possibility for the Archdiocese to resolve fairly *all* pending [tort]
14 claims, to manage a difficult financial situation and to preserve the
15 ability of the Archdiocese to fulfill its mission." Disclosure Statement
16 Regarding Debtor's Plan of Reorganization at 8, filed November 15, 2005
17 (emphasis in original).

18 In the approximately 18 months since this case was filed, a number
19 of steps have been taken to accomplish that objective. A claims bar date
20 was established and resulted in approximately 200² sex abuse claims being
21 filed. A future claimants representative was appointed. Debtor removed
22 approximately 60 sex abuse claims from state court to federal court.
23 Many of the claimants responded by filing motions to remand and/or
24 abstain. At the request of debtor, and with the cooperation of many of
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26 ² This number is based on the representation in Debtor's
Disclosure Statement at 9.

1 the tort claimants, processing of the remand/abstention motions was held
2 in abeyance and the discovery and litigation efforts were focused on a
3 large scale mediation of claims, which occurred in August and September,
4 2005.

5 Relatively few of the mediated claims settled, and the tort
6 claimants requested that their remand/abstention motions be decided.
7 Many of the tort claimants filed motions for relief from stay so that
8 they could proceed to liquidate their claims in state court. The motions
9 before the court have been filed by 111³ of the tort claims and fall into
10 four factual patterns:

11 (1) Claimants with pending state court claims that were removed by
12 debtor.

13 (2) Claimants with pending state court claims that were removed by
14 the claimants.

15 (3) Claimants who have filed proofs of claim and who, postpetition,
16 filed state court claims against third parties arising from the same
17 conduct that is the subject of the proof of claim.

18 (4) Claimants who have filed proofs of claim and who have never
19 filed a state court action against debtor or any third party for the
20 conduct giving rise to their claim.

21 According to debtor's analysis, after eliminating claims that have
22 been disallowed or settled, there are 58 tort claims in which the
23 claimants do not seek remand, abstention or relief from stay.

24 All parties acknowledge that the claims at issue are "personal
25 injury tort" claims as that term is used in 28 U.S.C. 11 U.S.C. § 157.
26 Thus, this court cannot liquidate the claims at issue for purposes of
distribution, and the claimants' rights to jury trial are preserved in

³ This number comes from Debtor's Opposition to Motions for
Remand, Abstention and Relief from Automatic Stay at 1:19, filed November
30, 2005.

1 connection with the liquidation of their claims for distribution
2 purposes. 28 U.S.C. § 157(b)(2), (5).

3 The moving parties contend that the motions should be granted
4 because (1) the claims need to be resolved through jury trials, (2) the
5 claims at issue arise under state law and many involve non-debtor
6 defendants, (3) the filing of this bankruptcy case was an effort by
7 debtor to engage in forum shopping, and (4) it will be quicker and less
8 expensive to conduct the trials in state court than in the federal
9 district court, which is the only alternative forum.

10 Debtor explains its position as follows:

11 Notwithstanding that these claims involve many state law issues,
12 there are "core" issues regarding the property of the estate, i.e.
13 the "net worth" of this Debtor, that are within the original and
14 exclusive jurisdiction of this Court and cannot, as a matter of law,
15 be litigated in state courts via claims for punitive damages as
16 Movants request. Only this Court can determine that question, and
17 until that question is finally answered, no one can know whether any
18 amount is available to pay any claims for punitive damages.

19 Again, 58 claims are not subject to these Motions and will remain in
20 federal court for resolution. Splitting jurisdiction will result
21 only in inefficiency, a substantial risk of inconsistent and
22 uncoordinated trial court decisions, multiple appeal routes and a
23 gross waste of the resources that may ultimately be necessary to pay
24 these claims. Consistent pre-trial management of the claims will be
25 impossible if the claims are tried in multiple forums. All pending
26 claims against the Debtor can be liquidated in a single federal
forum, whereas all cannot be liquidated in a single state forum.
Granting the requested relief would undermine the federal statutory
scheme, the purpose of which is to provide for the orderly and
efficient administration of the estate under 28 U.S.C. § 157 with
respect to "personal injury tort claims."

23 Debtor's Opposition to Motions for Remand, Abstention and Relief from
24 Automatic Stay at 2:13 - 3:9 (emphasis in original).

25 DISCUSSION

26 This case has been a tug-of-war between extreme positions. Despite

1 its claims that it wants to fairly compensate the victims of child sex
2 abuse by priests, debtor has been adamant that canon law controls
3 ownership of assets, so that the pool of assets may be as limited as \$19
4 million and the claimants should be willing to accept amounts that
5 reflect the limited fund. On the other side are some of the claimants
6 who assert individual claims for punitive damages in excess of \$100
7 million in addition to multi-million dollar compensatory damage claims.
8 Caught in the middle are the parishioners whose churches and schools are
9 at risk in the battle, the recipients of debtor's charitable activities
10 that may be curtailed if the battle is lost or by the cost of the battle
11 itself, and the tort claimants with legitimate claims who seek an
12 opportunity to establish what is just compensation and to be paid that
13 amount, but whose trials and compensation are being delayed by the
14 protracted battle.

15 Debtor filed this case in order to deal with the tort claims. All
16 of the parties, at various times, have suggested that debtor has adequate
17 resources to pay compensatory damages awarded to tort claimants whose
18 claims are ultimately allowed, but there are numerous disputes with
19 respect to the individual claims about liability, whether the claims are
20 barred by the statute of limitations, and the amount of compensatory
21 damages properly awardable to individual claimants.

22 In Chapter 11, claimants must receive at least as much as they would
23 receive in a Chapter 7 bankruptcy, unless the creditor agrees to accept
24 less. 11 U.S.C. § 1129(a)(7)(A). In Chapter 7 cases, nothing is paid on
25 punitive damages claims unless other claims, including claims for
26 compensatory damages, are paid in full. 11 U.S.C. § 726(a)(2) and (4).

1 At my request, the parties briefed whether it would be possible to
2 bifurcate the compensatory damage claims and have a separate collective
3 trial on punitive damages. The parties have convinced me that this
4 approach may not be legally possible.

5 Debtor argues that no claims should proceed to trial until the court
6 resolves whether debtor's pending Plan of Reorganization will be
7 confirmed. Although normally I would be tempted to accede to that
8 request, the facts and history in this case compel a different outcome.
9 The plan does nothing to establish the amount of the individual claims;
10 under the plan, each claimant is entitled to have his or her claim
11 liquidated in a jury trial in the United States District Court. Given
12 that fact and given that, during the 18 months that this case has been
13 pending, settlement efforts with respect to individual claims have been
14 tried and have largely failed, it is time to move forward with the
15 liquidation of the claims for distribution purposes. The lack of data
16 about how much juries will actually award on the tort claims may be
17 impeding the negotiation of a plan of reorganization. Trying a few of
18 the claims will help solve that problem, and may cause some of the
19 parties to reevaluate their positions.

20 The claimants must be given a jury trial in either state or federal
21 district court if their claims are to be tried. All of the claims are
22 based on state law. The liability and compensatory damages aspects of
23 the individual claims are claimant-specific.

24 There are two aspects of the punitive damages claims that convince
25 me that all claims involving punitive damages against debtor should be
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1 tried in one forum.⁴ First, there is a meaningful risk that, unless a
2 single forum handles all the claims involving punitive damages in a
3 coordinated manner, there may be multiple awards of such damages that
4 total more than is necessary to accomplish the purposes of punitive
5 damages.

6 Punitive damages are allowed in Oregon to punish a willful, wanton
7 or malicious wrongdoer and to deter that wrongdoer and others
similarly situated from like conduct in the future.

8 State ex rel. Young v. Crookham, 290 Or. 61, 65, 618 P.2d 1268 (1980).

9 Federal court is the only forum where all of the claims involving
10 punitive damages can be tried, because no remand/abstention motions have
11 been filed with respect to 58 of the claims and therefore those claims
12 will remain in federal court. Furthermore, if all the motions were
13 granted, adversary proceedings would be remanded to the state circuit
14 court in three different counties.

15 Second, one factor that is pertinent to the award and the amount of
16 punitive damages is the defendant's net worth. As debtor pointed out,
17 factual information regarding its net worth involves an analysis of what
18 is property of its bankruptcy estate which, in turn, involves federal
19 law.⁵ I must note, however, that debtor has taken the position in its
20 filed Plan of Reorganization that no punitive damages will be paid as
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22 ⁴ The fact that claims with a punitive damages component are
23 being retained in federal court does not mean that those claims should
24 languish. It simply means that they will be tried in a different forum.

25 ⁵ This court does not agree with debtor that the juries making
26 punitive damage determinations would effectively determine what is
property of the estate. Nonetheless, in ruling upon evidentiary issues
and possibly formulating pertinent jury instructions, the court will need
to consider federal bankruptcy law.

1 part of the plan. If debtor prevails in that position, this court would
2 reconsider its holding on these motions.

3 As to the claims that assert only compensatory damages, the
4 advantages of the state court outweigh the debtor's arguments in favor of
5 the federal forum. While the parties debate whether state or the federal
6 forum will provide faster trials, sending all the claims to one forum
7 will result in a very substantial burden on the selected forum. Dividing
8 the burden between the two is likely to increase the speed of disposition
9 in each forum, because there will be fewer claims. I conclude that
10 sending the claims asserting only compensatory damages to state court is
11 likely to result in quicker trials or settlements of those claims than
12 keeping them in federal court. To the extent that the claims that are
13 sent to state court involve pending lawsuits where there have already
14 been pretrial rulings, or raise pretrial issues that have already been
15 resolved by the state court in similar cases, the claims can be resolved
16 more quickly and inexpensively. State law and procedure does not afford
17 the same expert discovery as does the federal system, which should reduce
18 the cost and speed to trial. At bottom, the resolution of most of these
19 claims will be fact-driven. Consequently, I am not convinced that there
20 will be either a substantial savings or a risk of inconsistent decisions
21 and extra appeals by not retaining all the claims in federal court.

22 Having now explained the background, arguments and the reasons for
23 my decision in narrative form, I turn to the applicable law and cases
24 with respect to abstention and remand. The pertinent abstention statute,
25 which is part of 28 U.S.C. § 1334(c), provides:

26 (1) Nothing in this section prevents a district court in the
interest of justice, or in the interest of comity with State courts

1 or respect for State law, from abstaining from hearing a particular
2 proceeding arising under title 11 or arising in or related to a case
under title 11.

3 (2) Upon timely motion of a party in a proceeding based upon a State
4 law claim or State law cause of action, related to a case under
title 11 but not arising under title 11 or arising in a case under
5 title 11, with respect to which an action could not have been
commenced in a court of the United States absent jurisdiction under
6 this section, the district court shall abstain from hearing such
proceeding if an action is commenced, and can be timely adjudicated,
7 in a State forum of appropriate jurisdiction.

8 The standard for determining when to remand a removed claim is
9 found in 28 U.S.C. § 1452(b), which provides in part:

10 The court to which such claim or cause of action is removed may
11 remand such claim or cause of action on any equitable ground.

12 Because the analysis of discretionary abstention and remand are
13 essentially the same, I will discuss them together after considering
14 whether mandatory abstention has any application.

15 Counsel for some of the tort claimants argued that mandatory
16 abstention applies to claims where lawsuits were filed postpetition
17 against third parties, proofs of claim were filed against debtor in this
18 court, and the claims and the lawsuits involve the same conduct.
19 Mandatory abstention applies only if the claim is "related to a case
20 under title 11 but [does] not aris[e] under title 11 or aris[e] in a case
21 under title 11" 28 U.S.C. § 1334(c)(2). Allowance and
22 disallowance of claims is a proceeding arising in title 11. See 1
23 Lawrence P. King, Collier on Bankruptcy ¶ 3.01[4][c][iv] (15th ed. Rev.
24 2005). The fact that state law provides the basis for determining how
25 much the claim is does not make the determination of a claim a "related
26 to" proceeding. Claims allowance is an integral part of the bankruptcy

1 process because it is central to determining who is entitled to share in
2 distribution of the bankruptcy estate.

3 Turning now to discretionary abstention and remand, as the parties
4 recognize, in the Ninth Circuit, abstention is not applicable once a
5 proceeding is removed to federal court, because there is no pending state
6 court proceeding. In re Lazar, 237 F.3d 967, 981 (9th Cir. 2001). The
7 equitable factors that the court considers in determining whether to
8 abstain on a discretionary basis are used in determining remand motions.
9 In re Enron Corp., 296 B.R. 505, 508-509 (Bankr. C.D. Cal. 2003)
10 (identifies 14 factors considered in deciding remand motion, 12 of which
11 are the factors identified in In re Tucson Estates, Inc., 912 F.2d 1162,
12 1167 (9th Cir. 1990), as relevant to deciding discretionary abstention
13 motions).

14 The factors are (1) the effect or lack thereof on the efficient
15 administration of the estate if the Court recommends [remand or]
16 abstention; (2) extent to which state law issues predominate over
17 bankruptcy issues; (3) difficult or unsettled nature of applicable
18 law; (4) presence of related proceeding commenced in state court or
19 other nonbankruptcy proceeding; (5) jurisdictional basis, if any,
20 other than § 1334; (6) degree of relatedness or remoteness of
21 proceeding to main bankruptcy case; (7) the substance rather than
22 the form of an asserted core proceeding; (8) the feasibility of
severing state law claims from core bankruptcy matters to allow
judgments to be entered in state court with enforcement left to the
bankruptcy court; (9) the burden on the bankruptcy court's docket;
(10) the likelihood that the commencement of the proceeding in
bankruptcy court involves forum shopping by one of the parties; (11)
the existence of a right to a jury trial; (12) the presence in the
proceeding of nondebtor parties; (13) comity; and (14) the
possibility of prejudice to other parties in the action.

23 296 B.R. at 508 n.2.

24 I have already discussed factors 1, 2, 6 and 11. As to the other
25 factors:

26 (3) Although claimants allude to difficult or unsettled law

1 applicable to the claims, they do not identify any specific legal issues.
2 Having presided over several hearings on the numerous claim objections
3 filed by debtor, most issues appear to be factual rather than legal.
4 This factor does not weigh in favor of remand/abstention.

5 (4) With respect to a number of the claims where litigation was not
6 commenced prepetition, the claimant filed suit in state court against
7 nondebtor parties postpetition but did not join the debtor as a party
8 because of the automatic stay. As to those claims, this factor weighs in
9 favor of remand/abstention.

10 (5) There is no federal jurisdictional basis other than 28 U.S.C. §
11 1334, but that is often true in claims disputes in bankruptcy cases.
12 Liquidating these claims for purposes of distribution, although non-core,
13 is central to the completion of administration of this case.

14 (7) Because these claims are personal injury tort claims, they are
15 non-core when being liquidated for distribution purposes. This factor
16 does not apply.

17 (8) It is feasible to segregate the liquidation and the enforcement
18 of the claims, leaving the latter to the bankruptcy court.

19 (9) Retaining some of the claims in federal court will create a
20 burden on the bankruptcy court's docket, because this court is handling
21 the pretrial matters before the claims are sent to the district court for
22 trial. But the burden is manageable. This factor does not weigh in
23 favor of remand/abstention.

24 (10) Although claimants have provided evidence that debtor has a
25 definite preference for federal court, this court is not prepared to
26 conclude that debtor took the extreme step of filing Chapter 11 in order

1 to forum shop. The number and amount of the tort claims faced by debtor
2 at the time it filed, coupled with the refusal of many of debtor's
3 insurers to defend and/or indemnify, provide an ample basis for seeking
4 relief in a forum where debtor could deal globally with all claims,
5 rather than on a "race to the courthouse" basis. This factor does not
6 weigh in favor of remand/abstention.

7 (12) and (14) Some of these claims involve third-party defendants.
8 Several of the defendants have filed briefs in connection with these
9 motions that indicate agreement with the position of debtor that the
10 claims should remain in federal court. The State of Oregon, which has
11 11th Amendment sovereign immunity rights, has agreed to waive those
12 rights so long as the adversary proceedings involving claims against it
13 are tried as to all parties and all claims in one jury trial. The
14 Franciscan Friars indicate that they are willing to have the claims
15 against them remain in federal court or be remanded, as long as the
16 claims against multiple defendants are prosecuted and tried in the same
17 forum. Given the positions of the non-debtor parties with regard to
18 federal jurisdiction, it does not appear that retaining the removed
19 proceedings involving punitive damages in federal court will prejudice
20 third parties, and the existence of non-debtor parties should not be
21 dispositive.⁶ Nonetheless, the fact that there are such parties weighs
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24 ⁶ As discussed at oral argument, there are some claims with
25 punitive damages where lawsuits were filed against third parties after
26 debtor filed this bankruptcy case that involve the same conduct giving
rise to claims in this bankruptcy. Debtor suggested that such lawsuits
could be removed to federal court if relief from stay was granted, debtor
was added as a party defendant, and debtor then removed the lawsuit.
Relief from stay will be granted for this limited purpose.

1 in favor of remand with respect to the pertinent claims.

2 (13) Comity weighs in favor of remand, because these claims turn
3 largely on state law. As I explained above, some of the factual issues
4 pertinent to punitive damages will involve consideration of federal law.

5 CONCLUSION

6 The motions of the claimants who seek only compensatory damages (or
7 who agree to limit their damages claim to compensatory damages) for
8 relief from stay and for remand will be granted. Relief from stay will
9 be limited to liquidating the claims for distribution purposes. No
10 judgment liens may be created on the estate's real property.

11 The motions of the claimants who also seek, or wish to amend to add,
12 punitive damages will be denied with the following limited exception.
13 Relief from stay will be granted to the claimants who filed postpetition
14 state court lawsuits against third parties arising from the same conduct
15 as gives rise to their claims in this bankruptcy case, for the limited
16 purpose of allowing debtor to be added as a defendant in the state court
17 lawsuit so that the debtor can remove the lawsuit. Counsel for the
18 parties in the C.B. and J.D. adversary proceedings are directed to
19 prepare pretrial orders. A status conference will be set to discuss what
20 else needs to be done before this court recommends withdrawal of the
21 reference by the district court for the purpose of trying those
22 proceedings.

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1 Counsel for the tort claimants shall submit appropriate orders.
2 Orders granting or denying relief from stay shall be submitted in the
3 main bankruptcy case. Orders granting or denying remand shall be
4 submitted in the adversary proceedings. The orders submitted for the
5 adversary proceedings should indicate that the reasons for the ruling are
6 set out in this Memorandum Opinion, entered in the main bankruptcy case.

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9 cc: Thomas W. Stilley
10 David L. Slater
11 Kelly Clark
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